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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of October – 2021

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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

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United States v. Mark McGill, 8 F. 4th 617, August 10, 2021

McGill was on Federal Parole for possessing Child Pornography. A parole officer seized McGill's cell phone.

FACTS: McGill was on mandatory supervised release after being convicted of possessing child pornography. McGill had a history of violating the terms of his supervised release. In October 2015, his probation officer discovered that McGill had viewed sexually stimulating videos and images of minors on his monitored cell phone. McGill admitted to the violation, and the district court added a condition of supervised release that prohibited McGill from "possess[ing] or hav[ing] under his control any pornographic, sexually oriented, or sexually stimulating materials, including visual, auditory, telephonic, or electronic media, computer program, or services." (This agreement did not specifically authorize a search of any such device by law enforcement). McGill later failed two polygraph tests, administered as part of his sex offender treatment program, which detected deception when he was asked whether he had sexual contact with a minor.

When a Probation Officer conducted a home visit at McGill's residence, the Officer entered McGill's bedroom and noticed two cell phones—a black cell phone that the officer recognized as McGill's monitored phone and an unknown white cell phone in a black case on a table by the bed. According to the Officer, McGill moved around the room in an attempt to block the officer's view of the second cell phone. When the Officer asked about the phone, McGill told him that it was an old cell phone that no longer worked and that he only used it to charge a spare battery for the monitored phone. The Officer did not believe that explanation. At the Officer's request, McGill handed the white phone to him. The Officer claimed that McGill's demeanor changed when he asked about the phone. He became "deflated" and "sad" and said that he "would go back to prison for a long time if the judge found out what was on th[e] phone." The Officer asked if there was child pornography on the phone, and McGill said, "there is." For his part, McGill denied that he made any admissions about what was on the phone or that he acted suspiciously.

Law enforcement later discovered thousands of images of child pornography on the phone and charged McGill accordingly. McGill, arguing that his phone had been unlawfully seized, moved to suppress the phone and all evidence obtained from it. After an evidentiary hearing at which the Officer testified, the district court denied McGill's motion for four reasons: (1) the phone was contraband in the Officer's plain view; (2) the seizure was supported by the Officer's reasonable suspicion that the phone contained evidence of a supervised-release violation or crime; (3) the discovery of the evidence was inevitable; and (4) The Officer acted in good faith when he seized the phone.

ISSUE #1: Did the Seizure of McGill's Cell Phone Violate the Fourth Amendment? In this case, the Court held that there was no question that the Officer "seized" McGill's phone within the meaning of the Fourth Amendment and that he had no warrant to do so. Nor does anyone question that "a probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches [and seizures] be reasonable." Thus, the debate in this case was whether the Officer's warrantless seizure fell into an exception to the warrant requirement.

THE LAW: Generally, "searches and seizures inside a home without a warrant are presumptively unreasonable" under the Fourth Amendment. But "the warrant requirement is subject to certain reasonable exceptions." One such exception is known as the plain-view doctrine, which permits officers in certain situations to seize property without a warrant when the property's incriminating nature is "immediately apparent." Another exception permits law enforcement to seize property in a probationer's home so long as the officer has reasonable suspicion that the property is evidence of a crime.

SUB-ISSUE #1 – Plain View: The People argued that the seizure of McGill's cell phone was legal under the plain view doctrine.

THE LAW: Government officials may seize property without a warrant under the plain-view doctrine if (1) the officer is lawfully present at the place of the seizure, (2) the seized object is in the plain view of the officer, and (3) the incriminating nature of the object is immediately apparent. The incriminating nature of an item is "immediately apparent" if an officer has

"probable cause to believe that the item is contraband or otherwise linked to criminal activity." With a probationer like McGill, that criminal activity can include a violation of his conditions of supervised release. Even "an ordinarily innocuous object" may be seized under this doctrine "when the context of an investigation casts that item in a suspicious light."

FINDINGS: The Court held that there was no dispute that the first two elements were satisfied here—the Officer was lawfully present in McGill's house, and the unmonitored phone was in plain view. The only issue, then, was whether the phone's incriminating nature was immediately apparent. Although the district court determined "that the unmonitored cell phone was not in and of itself a violation of McGill's conditions of supervised release," it found that the incriminating nature of the phone was immediately apparent to Officer Williams under the circumstances. The Court of Appeals agreed.

The circumstances of the seizure were as follows: McGill's supervised-release conditions prohibited him from having contact with minors or possessing any sexually stimulating materials, including on a cell phone. At the time of the home visit, the Officer knew that McGill had previously violated the terms of his release by viewing child pornography on a cell phone and that he had failed two polygraph tests regarding his compliance with his supervised-release conditions. The Officer observed a cell phone that he believed was capable of connecting to the internet and that might relate to the failed polygraphs. He further noted that McGill attempted to hide the phone from his view and changed his demeanor when asked about the phone. McGill's odd explanation for having the phone—to charge an extra battery—further increased the Officer's suspicion, particularly because it didn't make sense to keep the phone in a case if its only purpose was charging a battery. Finally, the Officer was able to power up the phone, contrary to McGill's story, and observed a photo of a young boy on the phone's wallpaper. Based on the above facts, the Court held that the Officer had probable cause to believe that the unmonitored cell phone was linked to a violation of McGill's supervised-release conditions and thus the phone's incriminating nature was "immediately apparent." Because the incriminating nature of the phone was immediately apparent, the Officer's seizure was lawful under the plain-view doctrine, and the evidence that stemmed from that seizure need not be suppressed.

SUB-ISSUE #2 – **Reasonable Suspicion:** The Court also held that the Officer had reasonable suspicion to believe that McGill was in violation of his conditions of supervised release and that the cell phone was evidence of that violation or other criminal acts. The Officer saw an unknown, unmonitored phone that appeared to be capable of connecting to the internet. He knew that McGill had failed polygraph tests regarding his compliance with his terms of supervised release, and he observed McGill's suspicious behavior upon noticing the unmonitored phone. And the Officer—an experienced probation officer with training in monitoring sex offenders on supervised release—had been monitoring McGill for some time before this incident. Taken together, the Court held that these circumstances provided the Officer with reasonable suspicion to seize the phone as evidence of a supervised-release violation or crime. Suppression, therefore, was not warranted.

ISSUE #2: Even If the Phone Was Illegally Seized, did the Evidence Need to Be Excluded? No.

SUB-ISSUE #1 - Inevitable Discovery: Under the inevitable-discovery doctrine, "illegally seized evidence need not be suppressed if the government can prove by a preponderance of the evidence that the evidence inevitably would have been discovered by lawful means." The Officer's observations in McGill's home and McGill's statement that the phone contained evidence of child pornography were sufficient justification to obtain a warrant to seize the phone. Indeed, the Officer testified that, based on this information, he filed a violation report and requested a search warrant, a bench warrant, and a detention hearing in McGill's underlying case. Thus, the Court concluded that discovery of the evidence was inevitable, and the evidence need not be suppressed.

SUB-ISSUE #2 - Good Faith: The Court also held that when law enforcement acts "with an objectively reasonable good-faith belief that their conduct is lawful, the deterrence rationale loses much of its force," and the exclusionary rule does not apply. Here the Court noted that the Officer testified that he believed that the unmonitored phone violated McGill's conditions of supervised release and that it would also impede his ability to keep McGill in compliance. The district court found the Officer's testimony credible, and this Court agreed. Because the Officer acted with objective good faith in seizing the cell phone, the evidence need not be excluded.

CONCLUSION: The Court of Appeals affirmed the judgement of the district court when it denied McGill's motion to suppress his cell phone and all evidence discovered after a search of that phone.

QUIZ QUESTIONS FOR THE MONTH OF OCTOBER – 2021

United States v. Mark McGill, 8 F. 4th 617, August 10, 2021

1. Under federal law, the warrantless search of a home is generally considered to be unreasonable and illegal.

   a. True.

   b. False.

2. Government officials may seize property without a warrant under the plain-view doctrine. The plain-view doctrine has three elements. Which one of the following is not an element of the plain-view doctrine?

   a. the officer is lawfully present at the place of the seizure,

   b. the seized object is in the plain view of the officer,

   c. the place where the object is found is not open to the public,

   d. the incriminating nature of the object is immediately apparent.

3. The People argued that the Officer had sufficient reasonable suspicion to justify the seizure of the cell phone. Did the Court of Appeals disagree with this argument?

   a. Yes.

   b. No.

4. Under the inevitable-discovery doctrine, "illegally seized evidence need not be suppressed if the government can prove by a preponderance of the evidence that the evidence inevitably would have been discovered by lawful means." Could the People have applied the "inevitable-discovery" doctrine in this case?

   a. Yes.

   b. No.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF OCTOBER – 2021

United States v. Mark McGill, 8 F. 4th 617, August 10, 2021

1. Under federal law, the warrantless search of a home is generally considered to be unreasonable and illegal.

    a. True. Generally, "searches and seizures inside a home without a warrant are presumptively unreasonable" under the Fourth Amendment. Kentucky v. King, 563 U.S. 452, (2011) (quoting Brigham City v. Stuart, 547 U.S. 398, (2006)).

2. Government officials may seize property without a warrant under the plain-view doctrine. The plain-view doctrine has three elements. Which one of the following is not an element of the plain-view doctrine

    c. the place where the object is found is not open to the public, This is not an element of the plain-view doctrine.

3. The People argued that the Officer had sufficient reasonable suspicion to justify the seizure of the cell phone. Did the Court of Appeals disagree with this argument?

    b. No. The Court held: "(the Officer) had reasonable suspicion to believe that McGill was in violation of his conditions of supervised release and that the cell phone was evidence of that violation or other criminal act.

4. Under the inevitable-discovery doctrine, "illegally seized evidence need not be suppressed if the government can prove by a preponderance of the evidence that the evidence inevitably would have been discovered by lawful means." Could the People have applied the "inevitable-discovery" doctrine in this case?

    a. Yes. The Court concluded: "Indeed, (the Officer) testified that, based on this information, he filed a violation report and requested a search warrant, a bench warrant, and a detention hearing in McGill's underlying case. Thus, the discovery of the evidence was inevitable, and the evidence need not be suppressed."